

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

DFR No.2980 OF 2013
AND
IA No.52 OF 2014
IN
APPEAL NOS.1, 2 & 5 OF 2012

Dated:10th Feb, 2014

Present: HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. NAYAN MANI BORAH, TECHNICAL MEMBER (P&NG)

DFR No.2980 OF 2013 AND IA No.52 OF 2014 IN APPEAL No.1 OF 2012

In the Matter of:

Indian Oil Corporation Limited.,

...Appellant/Applicant

Versus

Gujarat State Petroleum Corporation Limited & Ors

...Respondent(s)

DFR No.2980 OF 2013 AND IA No.52 OF 2014 IN APPEAL No.2 OF 2012

Bharat Petroleum Corporation Limited.,

...Appellant/Applicant

Versus

Gujarat State Petroleum Corporation Limited & Ors

...Respondent(s)

DFR No.2980 OF 2013 AND IA No.52 OF 2014 IN APPEAL No.5 OF 2012

GAIL (India) Limited.,

...Appellant/Applicant

Versus

Gujarat State Petroleum Corporation Limited & Ors

...Respondent(s)

Counsel for the Appellant(s) : MR. C S Vaidyanathan, Sr Adv
Mr. Gopal Jain,
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Mr. Aspi Kapadia,
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Mr. Ankit Jain,
Mr. M G Ramachandran
Mr. Raghu Nayyar for GAIL
Mr. Rishabh Sancheti
Mr. Rajat Navet,
Ms. Sanya Talwar for IOCL and
BPCL

ORDER

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON

1. In these Appeals i.e. Appeal No.1, 2 and 5 of 2012 filed by the Indian Oil Corporation Limited., Bharat Petroleum Corporation Limited and GAIL (India) Limited respectively, this Tribunal rendered a judgment on 18.12.2013 allowing the Appeals after setting aside the Impugned Order passed by the Petroleum & Natural Gas Regulatory Board holding that the GAIL had indulged in restrictive trade practice by abusing its dominant position with respect to the delivery of RLNG i.e. Regasified LNG (Liquified Natural Gas) sales to the Gujarat State Petroleum Corporation Ltd.
2. During the pendency of these Appeals, this Tribunal passed an Interim Order dated 23.1.2012 directing the Appellants to allow the Gujarat State Petroleum Corporation Limited to change their RLNG delivery point and to take the connectivity to the Dahej LNG Terminal through pipelines subject to various conditions.
3. Accordingly, in compliance with the interim directions, the delivery point was shifted and Gujarat State Petroleum Corporation Limited deposited the differential amount in a separate account so that the said amount kept in the

separate account would be paid to the GAIL in the event these Appeals were allowed in favour of the GAIL.

4. After completion of the pleadings, the Appeals were heard for final disposal.
5. After hearing all the parties, the judgment was rendered by this Tribunal on 18.12.2013 allowing these Appeals and directing the delivery point to be shifted back to its original point and to transfer the amount kept in the separate account to GAIL by the Gujarat State Petroleum Corporation Limited.
6. After the pronouncement of the above judgment, the Gujarat State Petroleum Corporation Limited has filed this Application in DFR No.2980 of 2013 and IA No.52 of 2013 seeking for the stay of the operation of the judgment dated 18.12.2013 and for extension of interim order dated 23.1.2012.
7. This Application is stoutly opposed by the Respondents/ Appellants contending that the said Application is not maintainable especially when the ground for seeking for stay of the operation of the judgment is to enable them to exercise their statutory right of Appeal to the Hon'ble Supreme Court, which is not sustainable under law.

8. We have heard both the parties who argued at length.
9. We have perused the Applications both in IA No.52 of 2013 in DFR No.2980 of 2013 and the replies by the Respondents and the Rejoinder as well as the note submitted on 5.2.2014 by the Applicant.
10. We have also carefully considered the submissions of both the parties.
11. The prayer of the Applicant in this DFR as well in IA is for staying the operation of the judgment in these Appeals rendered on 18.12.2013 so as to enable the Applicant to file the Appeal before the Hon'ble Supreme Court to exercise its statutory right of Appeal.
12. On the basis of this prayer, the Applicant is seeking for a direction to the Respondents/Appellants to maintain the status-quo thereby not to take any coercive steps against the Applicant.
13. Having regard to the submissions made by both the parties, we are of the considered opinion that the prayer sought for in these Applications cannot be granted for the following reasons:

- (a) The only ground urged by the Applicant is that it has a statutory right of Appeal before the

Hon'ble Supreme Court and, therefore, the Applicant is entitled to seek for the stay of the operation of the judgment of this Tribunal till it files an Appeal before the Hon'ble Supreme Court. In this Application, there is no reference about the provisions under which this prayer is sought for. It is a settled principle of law that the Court or the Tribunal becomes functus officio after rendering the final judgment. It cannot change, alter or vary its own judgment except to the extent of correction of typographical mistakes. This Application has been filed seeking for the stay of the operation of the judgment which virtually implies seeking for the extension of the Interim Order passed by this Tribunal dated 23.1.2012. By the judgment dated 18.12.2013, we directed the parties to comply with some of the conditions incorporated in the Interim Order dated 23.1.2012. As correctly pointed out by the Respondents, the effect of the judgment rendered on 18.12.2013 cannot be nullified by virtue of an order now by granting stay of the operation of the said judgment.

(b) By the judgment dated 18.12.2013, we have directed for the delivery point to be shifted back to

its original point. According to the Respondents, the delivery point which was changed pursuant to the Interim Order dated 23.1.2012 has again been shifted back to its original point pursuant to our judgment dated 18.12.2013. This shows that our judgment has been acted upon by the parties. Under those circumstances, we cannot resurrect the Interim Order dated 23.1.2012 as it no longer survives in view of the final judgment rendered on 18.12.2013.

(c) It cannot be debated that the Interim Order was passed on 23.1.2012 based on the undertaking given by the Gujarat State Petroleum Corporation Limited to the effect that if the final decision rendered in these Appeals is in favour of the Appellant (GAIL), the Gujarat Petroleum, would not only shift back the delivery point from the GSPCL pipe lines to the GAIL's original delivery point, but also that it would pay to the GAIL for the period when the delivery point of GAIL has not been used. Only in the light of the said undertaking, this Tribunal directed the Appellant to shift the delivery point to the Gujarat Petroleum pipe line and directed the Gujarat Petroleum to keep the amount

in a separate account which may be payable to the GAIL in the event of Appeals being allowed. In the light of the above order passed on the basis of its undertaking, the Gujarat Petroleum is bound by its undertaking to comply with directions given in the final judgment rendered by this Tribunal. As pointed out by the Respondents, the Gujarat Petroleum cannot now seek for any orders from this Tribunal contrary to the said undertaking.

(d) The only ground given in the Application is that the Applicant has a statutory right of Appeal before the Hon'ble Supreme Court and, therefore, is seeking a stay of the operation of the judgment till it files the Appeal in the Hon'ble Supreme Court. The above ground cannot be said to be a valid ground to grant stay of the operation of the judgment rendered by this Tribunal, especially when the Applicant is not willing to comply with its own undertaking given through an Affidavit before this Tribunal on the basis of which the Interim Order was passed.

(e) The various authorities cited by the Applicant in support of their prayer, would not apply

to this Tribunal, particularly when no ground has been made out to grant such prayers in the light of the undertaking given earlier.

14. In view of the above reasonings, we are not inclined to grant a stay of the operation of the judgment dated 18.12.2013. We hope and expect that the party who had given a solemn undertaking through an Affidavit before this Tribunal on the basis of which the party was allowed to enjoy the benefit of our Interim Order dated 23.1.2012 would now fully comply with the directions given in the judgement of Tribunal dated 18.12.2013.
15. With these observations, the above Applications are dismissed.

(Nayan Mani Borah) (Justice M. Karpaga Vinayagam)
Technical Member(P&NG) Chairperson

Dated: 10th Feb, 2014

✓ ~~REPORTABLE/NON-REPORTABLE~~